



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: White Buffalo Construction, Inc.
File: B-228419
Date: January 22, 1988

DIGEST

Bureau of Indian Affairs' determination that a firm meets eligibility criteria--100 percent Indian ownership and control--for responding to Buy Indian Act procurement is not objectionable where agency reasonably finds that an Indian was the sole stockholder, director, officer, and manager of the corporation.

DECISION

White Buffalo Construction, Inc. protests the award of a contract to Blaze Construction, Inc. under invitation for bids (IFB) No. R87-10, issued by the Bureau of Indian Affairs (BIA), Department of the Interior, for road construction on the Tulalip Indian Reservation in Washington.

We deny the protest.

The solicitation was issued as a total set-aside for small business economic enterprises certified as 100 percent owned and controlled by Indians/Alaska Natives. Three bids were received in response to the solicitation, including the low bid submitted by Blaze. Shortly after the August 28, 1987 bid opening, White Buffalo, the second low bidder, protested to the contracting officer, alleging that any award to Blaze would be improper because that firm was neither Indian owned and controlled nor a small business. After the contracting officer denied its protest and the Small Business Administration (SBA) found Blaze to be a small business concern, White Buffalo filed this protest with our Office.

White Buffalo contends that Blaze "may be affiliated" with companies controlled by a non-Indian, asserting that there is "reason to believe" that such companies provided Blaze with bonds, financing and expertise.

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The solicitation was set aside for 100 percent Indian owned and controlled enterprises pursuant to the Buy Indian Act, 25 U.S.C. § 47 (1982), which provides that:

"So far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in the open market in the discretion of the Secretary of the Interior."

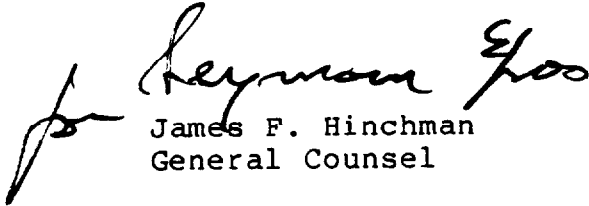
The Secretary of the Interior, acting through the BIA Commissioner, has broad discretionary authority to implement this statute; defining the criteria a firm must meet to qualify as an Indian enterprise, and the quantum of evidence required to establish compliance with the established criteria, falls within that broad discretion. Accordingly, we will disturb such decisions only where they are shown to be arbitrary, unreasonable or in violation of law or regulation. Interstate Brands Corp., B-225550, Mar. 3, 1987, 87-1 CPD ¶ 242. White Buffalo has not made such a showing here.

Pursuant to BIA policy, firms eligible to compete under Buy Indian set-asides must be not only Indian owned, they must also be Indian controlled as evidenced by active Indian participation in the business such that would tend to increase Indian self-sufficiency. In May 1985, Blaze was certified by BIA, for a period of 3 years, as a 100 percent Buy Indian firm on the basis that the only stockholder, member of the board of directors, officer, and manager of the corporation was William Aubrey, a Blackfoot Indian. In August 1987, personnel from BIA and the Department's Office of Inspector General conducted an on-site preaward survey of Blaze in connection with three other road construction projects. The survey team, which subsequently recommended award, reported that: (1) Mr. Aubrey was the owner, president, and sole member of the board of directors; (2) payroll records had been examined and employees interviewed so as to verify the size of Blaze's workforce; (3) Blaze had access to necessary heavy equipment; and (4) based upon a review of its original bid worksheets for the three projects, Blaze planned to perform virtually all of the work with its own workforce. Finding that Mr. Aubrey was the sole stockholder, director, officer and manager of Blaze, the contracting officer for the solicitation at issue here concluded that Blaze qualified as a 100 percent Indian owned and controlled enterprise.^{1/}

^{1/} Likewise, in responding to the size determination protest of White Buffalo, SBA's Assistant Regional Administrator for Minority Enterprise and Procurement Assistance determined that Blaze was under the ownership and

White Buffalo has failed to demonstrate either that BIA's factual conclusions were unreasonable or that the agency's interpretation and application of the requirements for qualification under the Buy Indian Act were unsound.

The protest is denied.

James F. Hinchman
General Counsel

control of Mr. Aubrey. Although White Buffalo appealed this determination to SBA's Office of Hearings and Appeals, the appeal was denied.